

PUBLIC COPY

U.S. Department of Homeland Security

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

FILE [REDACTED] Office: San Antonio, TX

Date: **MAY 28 2003**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I).

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant is married to a United States (U.S.) legal permanent resident and she has two U.S. citizen children. On January 1, 1997, the applicant was apprehended at the Eagle Pass, Texas, Port of Entry by the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services ("BCIS")). The record reflects that the applicant presented a false Illinois birth certificate in the name of [REDACTED] and that she falsely claimed to be U.S. citizen.

On January 6, 1997, the applicant was convicted in the United States District Court, Western District of Texas, of attempting to enter the U.S. by falsely representing herself to be a U.S. citizen, in violation of 8 U.S.C. § 1325(a)(3). The applicant was ordered removed on March 31, 1997, pursuant to sections 212(a)(7)(A)(i)(II) and 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(7)(A)(i) and 1182(a)(6)(C)(ii), as an alien not in possession of a valid entry document and an alien falsely claiming to be a U.S. citizen. The applicant seeks permission to reapply for admission into the United States after deportation or removal (I-212 application) in order to reside with her family in the United States.

The district director found that based on the evidence in the record, the applicant is statutorily inadmissible to the U.S. pursuant to section 212(a)(6)(C)(ii) of the Act. The district director concluded that, in light of the applicant's inadmissibility, no useful purpose would be served in adjudicating or granting the applicant's I-212 application. The application was denied accordingly.

Section 212(a)(6)(C) states in pertinent part:

(6) Illegal entrants and immigration violators.-

(C) Misrepresentation.-

(i) In general.- Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship-

(I) In General- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) states in pertinent part that:

(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien

A section 212(i) waiver of inadmissibility is available if an alien is found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. However, the section 212(i) waiver is not available to an alien found inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

In the present case, the applicant was found inadmissible and ordered removed pursuant to section 212(a)(6)(C)(ii) of the Act. She is thus ineligible for a waiver of inadmissibility.

The record indicates that at the time of her removal, the applicant received a Form I-296, Notice to Alien Ordered Removed/Departure Verification form (Form I-296) indicating that she was prohibited from entering, attempting to enter, or being in the U.S. for a period of 5 years. It is noted that the Form I-296 issued to the applicant contains erroneous information. The Form I-296 indicates that the applicant is inadmissible from the U.S. for a period of only 5 years. However, as discussed above, there is no waiver available to an alien found inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. Consequentially, the applicant is, in effect, permanently barred from admission into the United States.

In *Matter of Martinez-Torres*, 10 I&N Dec. 776 (BIA 1964), the BIA held that in the case of an applicant who is mandatorily inadmissible to the U.S. "no purpose would be served in granting [the] application for permission to reapply for admission into the United States." The BIA held further that the district director's action in denying an I-212 application as a matter of administrative discretion was therefore proper.

A review of the documentation in the record reflects that the applicant is statutorily inadmissible to the United States and that the district director's discretionary denial of her application was proper.

ORDER: The appeal is dismissed.